Comcast's new owned and managed Internet network will provide improved network reliability and customer service. It offers enhanced features such as easier sign-on, self-help, and self-installation, as well as Comcast-managed customer support for both general assistance and specialized assistance for individual problems. The new network will also enable Comcast to provide web-based remote e-mail access; customers will be able to retrieve their web-based e-mail remotely from anywhere they can access the Internet, a feature not available for Excite@Home users. Each customer will also have improved storage capabilities, including 25 megabytes of web-based storage space for large files like MP3s and photographs.

Comcast – Telephony. Comcast provides telephone services to approximately 41,500 customers (for a total of approximately 46,000 lines) in a number of its cable franchise areas in Maryland, Virginia, and Michigan, continuing the telephone operations associated with certain cable systems it acquired during the past several years.[16]

In addition, Comcast Business Communications ("CBC"), a wholly-owned subsidiary of Comcast, offers integrated broadband communications services to over 4,000 business and governmental customers primarily in Pennsylvania, New Jersey, Delaware, Maryland, and Michigan. CBC's services include exchange access, private line, and other services. CBC also provides competitive local exchange service, in the form of high-capacity trunk service, to several dozen small and medium-sized business

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customer to provide information and answer questions about the transition. Despite these considerable efforts, several unforeseen issues nonetheless arose during the transition. Those issues have since been addressed and resolved as they have arisen.

[16] All of these telephony customers are located within Comcast's cable footprint.

customers. Comcast's cable telephony and CBC's business offerings also include long distance service, provided primarily on a resale basis.

Comcast has taken a leadership role in developing cable-delivered IP telephony, and is currently conducting "soft switch" lab tests of this technology at its Philadelphia headquarters. In addition, it supports CableLabs, a non-profit research and development consortium of cable television system operators. Comcast President Brian L. Roberts is currently the Vice Chairman of CableLabs and served a term as Chairman. Mark Coblitz, Senior Vice President of Strategic Planning at Comcast, is the industry chairman of CableLabs's PacketCable project,[17] and other Comcast executives have participated actively in this and other CableLabs initiatives.

Comcast – Video Programming. Comcast owns attributable interests in four programming networks that focus on local and regional news, sports, and entertainment. These include: (1) "cn8, The Comcast Network" (100% ownership interest), which provides original local and regional news, public affairs, sports, and family-oriented programming in Pennsylvania, New Jersey, Delaware, and Maryland and which has been nominated for dozens of Mid-Atlantic Emmy Awards; (2) Comcast SportsNet (78%), a regional sports network and frequent Mid-Atlantic Emmy winner serving the Philadelphia area; (3) Comcast SportsNet-MidAtlantic (100%), a regional sports network serving the mid-Atlantic region from Baltimore to portions of North Carolina; and (4) Comcast Sports Southeast (72%), a regional sports network serving Alabama, Arkansas,

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[17] This initiative seeks to develop interoperable interface specifications for delivering advanced, real-time multimedia services, including IP telephony, over two-way cable plant. *See* Home Page, CableLabs PacketCable, *available at:* <http://www.packetcable.com> (last visited Feb. 16, 2002).

Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee.[18]

In addition to these local and regional programming services, Comcast owns attributable interests in seven national programming networks: (1) QVC, Inc. ("QVC") (58%), a national cable programming network and electronic retailer that provides TV- and web-based shopping in the United States, the United Kingdom, Germany, and Japan;[19] (2) the Discovery Health Channel (20%); (3) E! Entertainment (40%); (4) The Golf Channel (91%); (5) iN DEMAND (11%) (a pay-per-view programming cooperative); (6) The Outdoor Life Network (100%); and (7) style. (40%). Comcast owns a 94% interest in a new original programming network called the G4 Network, scheduled to launch in April 2002, which will provide entertainment, news, and information for video game enthusiasts.[20]

Comcast – Other Holdings. Comcast owns a majority interest in two major-league sports franchises (the Philadelphia Flyers National Hockey League franchise and the Philadelphia 76ers National Basketball Association franchise), Philadelphia's two

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[18] As described in section IV.C below, Comcast also produces "Comcast Newsmakers," "Comcast Local Edition," and other short-form public affairs programs that appear twice hourly on channels carrying CNN Headline News.

[19] QVC offers live retail shopping 24 hours a day, seven days a week. Its state-of-the-art e-commerce web site (QVC.com) offers a retail inventory of approximately 100,000 products. *See* 2000 Comcast Commerce Highlights, *available at*: <http://www.cmcsk.com/annuals/cards.pdf> (last visited Feb. 22, 2002). Last year, QVC shipped more packages than Lands' End, L.L. Bean, and Amazon.com combined. It ranked number one in the online general merchandising category in Forrester's August 2000 and January 2001 PowerRankings. *Id.*

[20] Comcast also owns a non-attributable, approximate 2% voting interest in the Florida News Channel. In addition, it owns a 5.3% general partnership interest in MusicChoice, a provider of commercial-free, compact disc-quality music channels to MVPD systems.

major indoor arenas, and several minor league baseball and hockey teams. In addition, Comcast owns a majority interest in Broadnet, which offers high-speed Internet and e-business services in Europe. Comcast is also a limited partner in Comcast Interactive Capital, a venture capital fund that invests in companies focused on interactive, infrastructure, and Internet technologies and applications.[21]

2. AT&T Broadband

AT&T Broadband is a wholly-owned subsidiary of AT&T Corp. AT&T Corp. currently provides a broad range of communications services through three separate business units: AT&T Consumer Services, AT&T Business Services, and AT&T Broadband. AT&T Comcast will acquire the assets of and services provided by AT&T Broadband, while the assets of and services provided by AT&T Consumer Services[22] and

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[21] *See* Home Page, Comcast Interactive Capital, *available at:* <http://www.civentures.com> (last visited Feb. 16, 2002).

[22] AT&T Consumer Services provides interstate and intrastate long distance communications services to approximately 60 million residential customers throughout the continental United States and provides, or joins in providing with other carriers, communications services to and from Alaska, Hawaii, Puerto Rico, and the Virgin Islands. AT&T Consumer Services also provides international communications services to and from virtually all nations and territories around the world. These consumer communications services include inbound and outbound domestic and international long distance service, calling card services and transaction-based services, such as operator-assisted calling services, directory assistance, prepaid phone cards, voice store and forward messaging services, and accessible communications service for deaf and hearing impaired customers. AT&T Consumer Services also provides local calling resale and wholesale telephony offerings through an unbundled network elements platform, as well as dial-up Internet service through AT&T WorldNet Service. In addition, AT&T Consumer Services offers combined long distance and local services in selected locations and is developing a multi-service platform, the AT&T WorldNet High Speed Service, based upon digital subscriber line ("DSL") technology, for combined voice, data and other broadband services.

AT&T Business Services[23] will be retained by AT&T Corp.

AT&T Broadband is a leading provider of cable television service, cable Internet service, and cable telephony service. AT&T Broadband also has limited video programming interests, and is conducting trials of interactive TV and other services.[24] Each of these lines of business is described in more detail below.

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[23] AT&T Business Services offers a variety of global communications services to over four million customers in 60 countries and 850 cities worldwide, including large domestic and multi-national businesses, small and medium-sized businesses, and government agencies. These business services include business local, long distance, international, and toll-free voice services. AT&T Business Services also offers data and Internet services, including private line services, special access services, and data and IP services such as Frame Relay and Asynchronous Transfer Mode services. AT&T Business Services also provides various managed networking services and outsourcing solutions, including enterprise networking services (which enable specific business applications like e-mail, VoIP, order entry systems, and employee directories; secure remote access intranet and extranet solutions with controlled access; and use of Intelligent Content Distribution Services to accelerate delivery of Internet), Web services (hosting services through a managed environment of network, server, and security infrastructure, including application performance management, database management, hardware and operating system management, storage services, and managed security and firewall services), high availability and security services (high-end integrated solutions to ensure continuous operation of critical business processes, including business continuity and disaster recovery services, information technology, work center, and risk management/business continuity analysis, planning and operational capabilities), as well as wholesale transport services.

[24] AT&T Broadband has entered into four principal network services agreements with AT&T: (1) a Master Carrier Agreement that reflects the market-based rates, terms and conditions on which AT&T Business Services will, *inter alia*, sell long distance services to AT&T Broadband for resale, terminate traffic outside of AT&T Broadband's service area, and provide "administrative services" for internal AT&T Broadband usage, (2) a Local Network Connectivity Services Agreement, pursuant to which AT&T Business Services will, *inter alia*, provide to AT&T Broadband transport, switching, feature functionality, operational engineering, maintenance, purchasing, installation, systems, support services and other functions to support AT&T Broadband's local exchange, intraLATA toll and exchange access telephony offerings, (3) a Master Facilities Agreement that permits AT&T to use AT&T Broadband's existing fiber facilities and to lease new fiber facilities constructed by AT&T Broadband for AT&T, and (4) an Interconnection and Intercarrier Compensation Term Sheet that specifies the terms of interconnection of the parties' networks and of compensation for the exchange of local traffic and the origination and termination of interexchange traffic by one party for the

AT&T Broadband – Cable Systems. AT&T Broadband offers its customers a full array of traditional video products, including local broadcast stations; national, regional, and local cable programming channels; premium movie channels; and pay-per-view services. In 2001, AT&T Broadband's capital expenditures to upgrade plant and deploy advanced services amounted to $3.26 billion, and as of December 31, 2001, approximately 76% of AT&T Broadband's plant had been upgraded to at least 550 MHz and 59% had been upgraded to at least 750 MHz. In 2001, AT&T Broadband earned $7.8 billion in cable distribution revenues.[25]

AT&T Broadband generally divides its interests in cable systems into three categories: (1) owned and operated systems (of which AT&T Broadband is the 100% owner); (2) consolidated systems (in which AT&T Broadband has a greater than 50%, but less than 100%, interest, and which are consolidated for financial reporting purposes); and (3) non-consolidated systems (in which AT&T Broadband has a 50% or less interest). A chart listing all of AT&T Broadband's cable systems, their ownership structure, and total number of customers, is attached as Appendix 7.

Owned and Operated and Consolidated Systems. As of December 31, 2001, AT&T Broadband's owned and operated cable systems served approximately 13.44 million customers. AT&T Broadband's consolidated systems served approximately

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other. In addition, AT&T Broadband and AT&T have entered into a High Speed Internet Services Binding Term Sheet that reflects the rates, terms and conditions on which AT&T will provide managed IP layer services, support and maintenance, and specified subscriber functionalities (such as Internet search and navigation tools) to support AT&T Broadband in its provision of high-speed Internet services to its subscribers.

[25] *See AT&T Group Earnings Commentary - Fourth Quarter 2001* at 12-14 (Jan. 30, 2002) ("*AT&T Group Earnings Commentary*").

121,000 customers. Of the combined 13.56 million customers, approximately 3.5 million (or 26%) were digital cable customers.

Non-Consolidated Systems. AT&T Broadband's non-consolidated cable systems include investments in companies, joint ventures, and partnerships that provide cable, video programming, telephony, and high-speed Internet services similar to those described above. These investments include AT&T Broadband's limited partnership interest in TWE, which owns both cable systems and video programming services. AT&T Broadband's interest in TWE is described in section V.F below; as set forth in that section, the Applicants intend to have no attributable interest in TWE at and after the closing of their merger.

In addition to the TWE interest, AT&T Broadband's non-consolidated systems include the following key investments:[26]

- *Insight Midwest.* Insight Midwest is a Delaware limited partnership formed in 1999 to own and operate certain cable systems in Indiana. AT&T Broadband holds a 50% limited partnership interest, and Insight Communications holds a 50% limited and general partnership interest. The business of the partnership is managed by Insight Communications, as the general partner, although certain matters also require the approval of AT&T Broadband. Insight Midwest currently has approximately 1.2 million customers.

- *Texas Cable Partners.* Texas Cable Partners is a Delaware limited partnership formed in December 1998 to own and operate certain cable systems in Texas. The partnership is owned 50% by AT&T Broadband and 50% by Time Warner Entertainment-Advance/Newhouse Partnership, approximately two-thirds of which is owned by TWE. The general manager of Texas Cable Partners is Time Warner Cable, a division of TWE, although certain governance matters require the approval of the management committee, on which the Time Warner Entertainment-Advance/Newhouse Partnership and AT&T Broadband have equal representation. Texas Cable Partners currently has approximately 1.1 million customers.

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[26] For a comprehensive list of all AT&T Broadband investments in non-consolidated systems, see the chart in Appendix 7.

AT&T Broadband's non-consolidated cable systems also include its ownership of shares representing a 4.98% voting interest in Cablevision Systems Corp. ("Cablevision"). Cablevision owns cable systems and provides video programming, telephony, and high-speed Internet services. By virtue of its interest in Cablevision, AT&T Broadband has an indirect interest in Rainbow Media Sports Holdings, Inc. ("Rainbow"), which is 77.1% owned by Cablevision, and which owns interests in a number of national and regional program services.[27] In separate recent offerings, AT&T Broadband sold approximately 19.15 million of its Cablevision NY Group Class A shares, and approximately 15 million of its Rainbow Media Group Class A shares.[28] As a result of these transactions, and giving effect to Cablevision's and Rainbow's super-voting Class B shares (AT&T Broadband owns no Cablevision Class B or Rainbow Class B shares), AT&T Broadband's voting interest in Cablevision is now 4.98%.[29] In addition, in a letter dated June 6, 2001, AT&T Broadband irrevocably and permanently waived its right under the Stockholders Agreement to nominate two directors to the

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[27] NBC owns the other 22.9% of Rainbow. Rainbow's national program services include American Movie Classics, Bravo, Independent Film Channel, Mag Rack, MuchMusic USA, and Women's Entertainment. *See* Rainbow Media, *About Rainbow: Company Structure, available at*: <http://www.rainbow-media.com/about/company_struc_index.html> (last visited Feb. 22, 2002). Rainbow's regional program services include the Fox Sports Net services, MSG MetroGuide, MSG Metro Learning Channel, MSG Network, MSG Traffic and Weather, and News 12 Networks. *See id.*

[28] The Rainbow shares are a tracking stock meant only to provide an indication of the value of the Rainbow programming assets and do not reflect an ownership interest separate from Cablevision.

[29] All the Cablevision and Rainbow shares together have 696,222,649 total votes. AT&T Broadband's Cablevision and Rainbow shares together have 34,686,555 votes. Consequently, AT&T Broadband's voting interest equals 4.98% (*i.e.*, 34,686,555 ÷ 696,222,649 = 4.98%).

Cablevision Board of Directors.[30] The two directors AT&T had previously nominated to the Board resigned as of that same date. Because AT&T Broadband's interest in Cablevision is now below the 5% voting stock threshold, and because AT&T Broadband has no representation on the Cablevision Board (and no right to appoint a representative to the Board), Cablevision (and, therefore, Rainbow) are no longer attributable to AT&T Broadband under the Commission's cable horizontal attribution rules.

AT&T Broadband – Interactive TV Services. AT&T Broadband continues to experiment in the development and deployment of various services that might be called "interactive TV services."[31] AT&T Broadband currently provides an interactive program guide to its 3.5 million digital cable customers and is working with a variety of interactive TV companies to develop, test, and deploy a broad array of interactive services, including video-on-demand, digital video recorders, enhanced interactive content, e-mail, and Internet service through customers' TVs.

For example, with respect to video-on-demand, AT&T Broadband and Diva have conducted trials in Atlanta and Los Angeles, and AT&T Broadband recently launched initial deployments in Atlanta, Los Angeles, Pittsburgh, and San Francisco.[32] With respect to digital video recorders, AT&T Broadband and TiVo recently introduced

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[30] A copy of the letter is attached as Appendix 8.

[31] *See infra* section VI.D (discussing prematurity of attempting to define "interactive TV services").

[32] *See* Press Release, AT&T Broadband, *AT&T Broadband to Launch Video on Demand with DIVA* (Oct. 3, 2000), *available at:* <http://www.att.com/press/item/0,1354, 3367,00.html>.

TiVo's digital video recorder to AT&T Broadband customers in select cities.[33] AT&T Broadband is also currently working with interactive TV companies such as WorldGate, Liberate Technologies, and Microsoft to develop interactive services that include, among other services, e-mail, TV-based Internet service, and customized interactive content.[34] In addition, AT&T Broadband and Liberate have entered into a non-exclusive agreement to develop and deploy interactive TV services to the 2,000 cable systems, serving 140 cable operators, that use AT&T Broadband's Headend In The Sky ("HITS") service.[35]

AT&T Broadband – Internet. AT&T Broadband has over 1.5 million high-speed Internet service customers. AT&T's Internet service is available to almost 15 million households, or approximately 61% of homes passed by AT&T Broadband cable

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[33] *See* Press Release, TiVo, Inc., *AT&T Broadband and TiVo to Introduce Digital Video Recorders to Cable Customers* (Nov. 7, 2001), *available at:* <http://www.attbroadband.com/services/other/pressreleases/2001_11_07.html>.

[34] *See* Press Release, WorldGate Communications, Inc., *AT&T Broadband to Launch WorldGate in Tacoma, Washington* (June 11, 2001), *available at:* <http://www.wgate.com/news/newsReleases/2001/0611.html>; Press Release, AT&T Broadband, *AT&T Broadband Clarifies Interactive Television Position* (Aug. 23, 2001), *available at:* <http://www.att.com/press/item/0,1354,3954,00.html>.

[35] *See* Press Release, Liberate Technologies, *AT&T's HITS and Liberate Complete Milestone for Low-Cost ITV Services* (Aug. 22, 2001), *available at:* <http://press.liberate.com/archives/2001/082201_att_hits.html>. AT&T Broadband has also agreed to enter into arrangements with Liberty Media for interactive video services under one of two arrangements, at AT&T Broadband's election. Pursuant to a five-year arrangement, renewable for an additional four-year period, AT&T Broadband will make available to Liberty Media capacity equal to one 6 MHz channel to be used for interactive, category-specific video channels that will provide entertainment, information and merchandising programming. Alternatively, AT&T Broadband may enter into one or more mutually agreeable ventures with Liberty Media for interactive, category-specific video channels that will provide entertainment, information and merchandising programming. Each venture will be structured as a 50/50 venture for a reasonable commercial term, and will provide that Liberty Media and AT&T Broadband will not provide interactive services in the category(s) of interactive video services provided through the venture for the duration of such term other than through the joint venture. At this time, neither option has been pursued.

systems. Prior to its bankruptcy, Excite@Home maintained and operated many of the facilities that connected AT&T Broadband's headend equipment to the public Internet. In connection with the bankruptcy and shutdown of the Excite@Home network, AT&T Broadband invested substantial resources to provision a replacement network and to transition affected customers to the new network. AT&T Broadband's high-speed Internet service is considerably more robust as a result of these changes. In addition, AT&T Broadband is now undertaking to consolidate customers currently on the network built by the former "Road Runner" partnership onto the new network.[36] AT&T Broadband also plans to take a number of steps to enhance the attractiveness of its high-speed Internet service offerings. In particular, AT&T Broadband plans to expand its current product line to include additional features such as home networking and remote e-mail access.

AT&T Broadband – Telephony. AT&T Broadband is an industry leader in cable-delivered mass market local telephony. AT&T Broadband's investment in and deployment of circuit-switched cable telephony technology have enabled it to offer a competitive, facilities-based alternative to the incumbent LECs' telephone services using the same hybrid fiber-coaxial network that supplies AT&T Broadband's video service.

AT&T Broadband currently markets cable telephony service to approximately seven million households in 16 markets, and has over one million customers (or 14.8% of its marketable homes). In the past year, AT&T Broadband added almost one-half million new cable telephony customers, increasing its customer base by over 100%.

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[36] Pursuant to its consent decree with the Department of Justice, AT&T Broadband has divested its interest in Road Runner (acquired as a result of the MediaOne merger). *See infra* note 89.

Currently, AT&T Broadband offers cable telephony services in Atlanta; Boston; the San Francisco Bay Area; Chicago; Dallas; Denver; Hartford; Jacksonville; Pittsburgh; Portland, Oregon; Richmond; Seattle; Salt Lake City; St. Louis; southern California; and the Twin Cities. For 2001, telephony revenues were $495 million.[37] AT&T Broadband offers consumers a variety of options and calling plans with various price points. These options and calling plans range from basic single line service to multiple lines with full feature functionality.

AT&T Broadband – Video Programming. In the last year, AT&T Broadband has dramatically reduced its ownership of video programming services. First, on August 10, 2001, AT&T Broadband completed a tax-free spin-off of Liberty Media Corporation, which owns all of the assets attributed to the Liberty Group, including interests in a large number of video program services. Liberty Media Corporation is now an independent, publicly traded company, which is entirely separate from AT&T Corp. and AT&T Broadband and therefore no longer attributable to AT&T Broadband under the Commission's rules. Second, as noted, now that the Cablevision interest is no longer attributable to AT&T Broadband, the Rainbow video program services are also no longer attributable to AT&T Broadband. Third, last year, AT&T Broadband sold all of its interests in the Food Network, The Outdoor Life Network, Speed Channel, and The Sunshine Network.

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[37] *See AT&T Group Earnings Commentary* at 14.

As a result of the foregoing transactions, AT&T Broadband now owns attributable interests in three national video program services[38] – E! Entertainment (10%); style. (10%); and iN DEMAND (44%) – and three regional services – Fox Sports New England (50%), New England Cable News (50%), and Pittsburgh Cable News Channel (30%).

Through its ownership interest in TWE, AT&T Broadband also has an interest in certain program services owned by TWE, including HBO, Cinemax, Comedy Central, and Court TV. As set forth in section V.F below, the Applicants intend to have no attributable interest in TWE at and after the closing of their merger.

3. Connecting Classrooms And Communities

From AT&T Broadband's technological and financial commitment to the Boys and Girls Clubs in the Northeast to Comcast's dedication in providing computers and Internet service to hundreds of schools, both companies have a long history of service in their local communities. AT&T Broadband and Comcast have put broadband technology to work for education.

In conjunction with the industry's Cable in the Classroom program, the companies deliver cable and Internet services to more than nine million students across the country. Today, for example, nine out of 10 schools in AT&T Broadband's service areas comprising 38 states receive more than 540 hours per month of commercial-free, educational programming. AT&T Broadband also provides more than one million students with access to high-speed cable Internet service.

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[38] AT&T Broadband also owns: (1) a *de minimis* interest (less than ¼ of 1%) in USA Networks, Inc.; and (2) an interest in "Odyssey Television," a documentary pay television service distributed in Australia.

As of year end 2001, over 1,200 schools and more than 250 public libraries were receiving free high-speed Internet service from Comcast, and over 8,500 schools received free video programming through Comcast's partnership with Cable in the Classroom. Another Comcast initiative, known as the Comcast Technology Academy, has provided free technology training to over 3,000 K-12 teachers since its launch in January 2001. The program, a partnership between the Comcast Foundation and Cable in the Classroom, began in Montgomery County, Maryland and is currently being expanded through the greater Washington, D.C. area. Comcast also continues to develop its ongoing service initiative, known as Comcast Cares Day, in which employees volunteer their time to complete a variety of neighborhood projects with schools and community organizations. In October 2001, over 6,100 Comcast employees in 26 states volunteered in over 120 projects, including a work day at Anacostia High School with over 400 employees from the Washington and Virginia region.

AT&T Comcast will take advantage of the best practices each company has to offer in continuing and enhancing its service to the community. It will, for example expand its Comcast Cares Day initiative to all AT&T Comcast states upon completion of the merger.

III. MERGER REVIEW STANDARDS

The Commission has stated that it will approve a transfer of control of authorizations and licenses connected with a proposed merger under sections 214(a) and 310(d) of the Act if, after weighing "the potential public interest harms of the merger against the potential public interest benefits," it concludes that, "on balance," the transfer

"serves the public interest, convenience and necessity."[39] In assessing the potential public interest benefits of a proposed merger, the Commission "focuses on demonstrable and verifiable public interest benefits that could not be achieved if there were no merger."[40] The Commission's analysis of potential harms encompasses both an examination of potential anticompetitive effects and an inquiry into whether the transaction would violate the Act or the Commission's implementing rules, or otherwise substantially frustrate the Commission's implementation or enforcement of the Act.[41] The Commission has repeatedly stressed that a merger proceeding must focus on *merger-specific* harms (and benefits) and is not an open forum for airing pre-existing or industry-wide disputes.[42]

As set forth in sections IV and VI below, the proposed merger of Comcast and AT&T Broadband will generate substantial public interest benefits and no public interest harms. Moreover, as set forth in section V, the proposed merger will comply with the Commission's rules, including any limits on horizontal and vertical ownership that the

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[39] *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from MediaOne Group, Inc., Transferor, to AT&T Corp., Transferee*, 15 FCC Rcd 9816, ¶ 8 (2000) ("*AT&T-MediaOne Merger Order*").

[40] *Id.* ¶ 154.

[41] *Id.* ¶ 9.

[42] *See, e.g., Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations of Time Warner Inc. and America Online, Inc., Transferors, to AOL Time Warner Inc., Transferee*, 16 FCC Rcd 6547, ¶ 6 (2000) ("*AOL-Time Warner Merger Order*") ("It is important to emphasize that the Commission's review focuses on the potential for harms and benefits to the policies of the Communications Act that flow from the proposed transaction – *i.e.*, harms and benefits that are 'merger-specific.' The Commission recognizes and discourages the temptation and tendency for parties to use the license transfer review proceeding as a forum to address or influence various disputes with one or other of the applicants that have little if any relationship to the transaction or to the policies and objectives of the Communications Act.").

Commission may adopt, consistent with the D.C. Circuit's decision in *Time Warner II*, in the separate proceeding the Commission has initiated in light of that decision.[43] The Commission should consequently approve the merger and grant its consent to the transfer of control of the Applicants' licenses and authorizations to AT&T Comcast.

IV. THE MERGER WILL GENERATE SUBSTANTIAL PUBLIC INTEREST BENEFITS.

The merger of Comcast and AT&T Broadband will produce a host of substantial public interest benefits. The combination will create efficiencies and synergies that will allow AT&T Comcast to accelerate the availability of local telephony, digital video, high-speed Internet service, and other broadband services to millions of residential consumers in areas of 41 states. As demonstrated below, these benefits would not be achieved as broadly or quickly without the merger. This increase in facilities-based competition for each of these services will, as the Commission has recognized, provide important consumer benefits by creating choices in a range of services and accelerating competition and innovation for new advanced services and features.[44]

The Commission has previously recognized that cable mergers that bring together complementary assets and thereby create scale and scope efficiencies can greatly benefit the public by accelerating the deployment and availability of new cable-delivered

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[43] *See Implementation of Section 11 of the Cable Television Consumer Protection and Competition Act of 1992*, 16 FCC Rcd 17312 (2001) ("*Horizontal Ownership FNPRM*").

[44] *See Extension of the Five-Year Build-Out Period For BTA Authorization Holders in the Multipoint Distribution Service*, 16 FCC Rcd 12593, ¶ 6 (2001); *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 15 FCC Rcd 3696, ¶¶ 103-104 (1999) ("*UNE Remand Order*").

services.[45] In only two years, for example, the complementary assets and experiences of AT&T, TCI, and MediaOne have allowed AT&T Broadband to deploy local telephony and high-speed Internet services that are now marketed to millions of homes.

The merger will not only accelerate the development and deployment of facilities-based services to residential customers by AT&T Comcast – although that alone is of tremendous value to millions of consumers. AT&T Comcast's efforts will also provide a competitive spur to other entities, including incumbent telephone companies, nationwide direct broadcast satellite ("DBS") providers, and others. As the Commission has recognized, the existence of a strong and credible broadband alternative on cable has generated competitive responses in the form of accelerated DSL deployment by incumbent telephone companies,[46] and this proposed merger will only advance this trend.

A. The Merger Will Accelerate The Deployment Of Facilities-Based High-Speed Internet Service, Digital Video, And Other Broadband Services, Particularly To Residential Customers.

Comcast and AT&T Broadband both offer high-speed Internet services, serving a combined 2.5 million customers. The merger will enable AT&T Comcast to offer high-

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[45] *AT&T-MediaOne Merger Order* ¶¶ 7, 160; *see also Applications of AT&T Corp. and Tele-Communications, Inc. for Transfer of Control of Tele-Communications, Inc. to AT&T Corp.*, 14 FCC Rcd 3160, ¶ 147 (1999) ("*AT&T-TCI Merger Order*") (finding that the merger of AT&T and TCI would "create an entity that has incentives to expand its operations and provide facilities-based competition in the local exchange and exchange access markets, and will be able to do so more quickly than either party could alone").

[46] The Commission's Cable Services Bureau observed in October 1999 that the "ILECs' aggressive deployment of DSL can be attributed in large part to the deployment of cable modem service. Although the ILECs have possessed DSL technology since the late 1980s, they did not offer the service, for concern that it would negatively impact their other lines of business. The deployment of cable modem service, however, spurred the ILECs to offer DSL or risk losing potential subscribers to cable." Cable Services Bureau, FCC, *Broadband Today: A Staff Report to William E. Kennard, Chairman, Federal Communications Commission,* at 27 (Oct. 1999), *available at:* <http://www.fcc.gov/Bureaus/Cable/Reports/broadbandtoday.pdf> (footnotes omitted).

speed Internet service to more customers sooner and at increased levels of efficiency. By accelerating the deployment of new, robust broadband facilities and introducing innovative applications over these facilities, the proposed merger will substantially benefit consumers as well as stimulate productivity gains and growth in the U.S. economy.[47]

Ability To Finance Capital Expenditures. As noted, over 95% of Comcast's customers are served by systems with a capacity of at least 550 MHz, and over 80% are served by systems with a capacity of at least 750 MHz or greater. With these system upgrades, Comcast's high-speed Internet service is today available to the vast majority of the more than 13 million homes its systems pass. Although AT&T Broadband also has expended significant resources upgrading the former TCI and MediaOne systems, it has experienced a number of delays in its deployment plans as the result of rising capital costs and significant budget constraints related to its heavy debt load. Consequently, substantial additional investment still will be required to complete the upgrade of AT&T Broadband's systems.

AT&T Broadband's merger with Comcast will enhance significantly its access to the capital required to underwrite an aggressive plan for deploying new broadband services such as HDTV and video-on-demand to residential consumers over existing AT&T Broadband systems. Comcast is widely recognized for its proven ability to manage an accelerated program for upgrading its plant while maintaining its operating

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[47] As a U.S. Department of Commerce report found, much of the economic growth of the late 1990s can be credited to productivity gains caused by the increased use of new data networks and other technological products. *See* Economics and Statistics Administration, Office of Policy Development, U.S. Department of Commerce, *Digital Economy 2000,* at 1-5, 28 (June 2000), *available at*: <http://www.esa.doc.gov/508/esa/pdf/DIGITAL.pdf>.

margins. It also enjoys a significantly stronger balance sheet than AT&T Broadband, with a ratio of debt to 2001 operating cash flow of less than 4 to 1, compared to AT&T Broadband's ratio of over 8 to 1. The Applicants estimate that the merged entity will have a first year combined debt to operating cash flow ratio of less than 5 to 1, representing a substantial improvement for AT&T Broadband. In addition, Comcast is currently generating high "free cash flow" from its operations (operating cash flow minus interest expenses, capital expenditures, and taxes), providing a significant non-debt source of funding for capital expenditures.

In addition, as set forth in the Declaration of Robert Pick ("Pick Declaration") attached as Appendix 9,[48] it is estimated that, within five years, the merger should result in synergies and efficiencies worth approximately $1.25 to $1.95 billion a year in increased Earnings Before Interest, Taxes, Depreciation, and Amortization ("EBITDA").[49] This estimate includes cost savings due to the elimination of corporate overhead costs and improved operating margins.[50] It also reflects the Applicants' belief that the merger will moderate their programming expenditures in comparison to costs

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[48] Mr. Pick is Senior Vice President, Corporate Development at Comcast, and has been directly involved in evaluating and estimating the synergies and efficiencies that will result from the merger.

[49] *See* Pick Declaration ¶ 7. In the course of calculating potential synergies and efficiencies from this merger, it was necessary to make certain simplifying assumptions and estimates, which inevitably inject a level of uncertainty into the analysis. Moreover, as AT&T Comcast integrates the operations of Comcast and AT&T Broadband, it may modify its plans for the launch and roll-out of services in light of the company's financial and operational performance and broader economic trends and developments. *Id.* ¶ 8.

[50] The Applicants estimate that such operating efficiencies should increase EBITDA by approximately $200-300 million a year after one to three years. *See id.* ¶¶ 25-28.

before the merger,[51] which will help offset the escalating programming costs they have faced in recent years.[52] Cost savings such as these, along with the other synergies and scale economies created by the merger that are described in the following sections, will enhance AT&T Comcast's ability to undertake the significant risks and costs in developing and deploying new, facilities-based services to customers.

Scale Economies. Scale economies should further buttress the combined company's ability to upgrade the AT&T Broadband systems and deploy new services to consumers. It is estimated that AT&T Broadband and Comcast collectively will spend approximately $5.5 billion in 2002 on capital expenditures items and, following the merger, AT&T Comcast will continue to incur capital expenditures.[53] AT&T Comcast should be able to obtain lower prices for many of these capital items as a result of the increased scale of its purchases.[54] Although the precise extent of this decrease cannot be

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[51] It is estimated that the merged entity should save $250-450 million a year in programming expenses. Where permissible under existing programming contracts, AT&T Comcast should be able to obtain the best rate of either AT&T Broadband or Comcast for AT&T Comcast's entire service area with respect to most programming contracts. AT&T Comcast may also be able to take advantage of volume discounts in certain circumstances that will help moderate (but not eliminate) the rate of increase in the growth of programming costs. *See id.* ¶¶ 18-21. At the same time, the proposed merger will raise no buyer market power concerns related to the purchase of video programming. *See infra* section VI.B.3.

[52] *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, CS Docket No. 01-129, Eighth Annual Report ¶¶ 9, 184-85 (rel. Jan. 14, 2002) (FCC 01-129) ("*2001 Video Competition Report*").

[53] Pick Declaration ¶ 23.

[54] *Id.*

determined at this point, it is estimated that AT&T Comcast, over the next four years, should be able to save $200-300 million annually.[55]

More generally, the scale economies created by the merger will foster more efficient use of infrastructure (*e.g.*, by allowing for more efficient use of call centers), and provisioning, repair and maintenance (*e.g.*, by providing local/regional scale to support efficient, centralized truck rolls). The merger will also provide national scale that will allow the merged firm more efficiently to defray the enormous research, development, and testing costs associated with new services and features. This increased scale is particularly important to accelerate the development and testing of new interactive TV services, voice-enhanced data service, home networking and security, and other new, and as yet untested, broadband services.[56] In addition to increasing the merged firm's own incentives to make risky investments in such new services and technologies, the combination will create a larger player whose commitment to such services can be expected to accelerate investment and research by the many equipment manufacturers, software developers, and others that are critical to the successful development and deployment of such new services to consumers.

Other Synergies That Will Accelerate Deployment of Broadband Services. AT&T Broadband and Comcast estimate that their proposed merger should create synergies of $100-200 million in EBITDA annually within three years due to the combined company's greater ability to research, develop, and deploy enhanced and new products such as video-on-demand, interactive TV, HDTV, cable-based home security

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[55] These benefits are not included in the estimated $1.25 to $1.95 billion in EBITDA noted above. *Id.* ¶ 7, 24.

[56] *See, e.g., AT&T-MediaOne Merger Order* ¶ 183.

and networking systems, and e-commerce services.[57] As noted, its combined scale will accelerate implementation and adoption of new products by enabling AT&T Comcast to spread its costs over a larger customer base, thus reducing per-unit costs.[58] The new company will also continue to take a leading role in advancing the adoption of open technology standards in the industry.[59] Such standards create greater certainty for application developers, which promotes investment, and can foster competition among different technology and software developers, which promotes innovation.

The combined company expects to take advantage of other efficiencies as well. For example, the increased level of Internet traffic resulting from combining the two companies' broadband operations will allow AT&T Comcast to take advantage of volume discounts in buying Internet backbone services to transport customer Internet traffic. As noted, where possible, the merged companies can consolidate call centers and other centralized functions of their broadband operations. Additionally, the combined firm will be able to benefit from the particular expertise each has developed in the areas of electronic commerce and customer care. Comcast has gained valuable experience in customer care systems through its QVC operations. AT&T Broadband has developed experience in online customer service and provisioning, including its "e-care" customer care systems (which allow consumers both to order service and to obtain immediate

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[57] *See* Pick Declaration ¶¶ 13-17. This estimate depends, of course, upon actual performance of various new products in ongoing trials and, if launched, in the marketplace, as well as broader economic trends. *Id.* ¶ 17.

[58] *See id.* ¶ 16 (noting the economies of scale associated with implementing the systems and infrastructure necessary to deploy these new products in the combined company's service area).

[59] As explained in section VI.C below, the proposed merger will have no anticompetitive impact on any equipment market.

Web-based self-help) and e-mail, personal Web page, and news group expertise. Both companies' expertise with these innovations can be used by AT&T Comcast to achieve greater effectiveness and efficiencies in customer service.

In the longer term, the benefits of the proposed merger will be even more profound. Digital broadband is extremely versatile and will undoubtedly serve as a platform for many new broadband services and features, some that are anticipated today and others that are not yet anticipated (or possibly even imagined).[60]

In sum, AT&T Comcast will be able to accelerate the deployment of new broadband services to consumers. By way of example, Comcast has conducted trials in Sarasota, Florida, of a new home and family security service enabling customers to view from a remote location (*e.g.*, from their place of work), via a password-restricted Internet website, the presence in their homes of a family member requiring care such as a child or an elderly person. Similarly, activity in a home can be made accessible to remotely located security employees for regular monitoring to identify particular events such as a break-in or other emergency. The merged entity will be able to take advantage of the expertise gained by Comcast from these trials to accelerate the deployment to all its customers of those services that prove feasible and attractive.[61]

B. The Merger Will Promote Facilities-Based Local Telephone Competition, Particularly To Residential Consumers.

The Commission has twice recognized that the merger of an experienced telephony provider and a cable company with more limited telephony experience is

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[60] *See, e.g., AT&T-TCI Merger Order* ¶ 147 ("the operation of market forces is likely to yield efficiencies and consumer benefits in addition to those we anticipate here").

[61] Pick Declaration ¶ 15.

"likely to benefit consumers by enhancing the merged entity's ability to compete more effectively with incumbent local exchange companies . . . in providing facilities-based local telephony . . . to residential consumers."[62] AT&T Broadband's performance over the past two years has validated the FCC's vision. In the face of formidable technological, economic, and operational challenges, AT&T Broadband now markets cable telephony to approximately seven million households in 16 markets, has over one million customers (or 14.8% of its marketable homes with penetration rates reaching 30% in some communities), and continues to expand the availability of competitive local telephony services to homes throughout the former TCI and MediaOne footprints.

The complementary assets and expertise of AT&T Broadband and Comcast will further accelerate the deployment of facilities-based local telephone competition, creating substantial public interest benefits. Six years after passage of the Telecommunications Act of 1996 ("1996 Act"),[63] virtually all local exchange traffic – and particularly residential traffic – continues to be carried by the incumbent LECs.[64] By promoting the deployment of facilities-based competition, the merger will further Congress's goal of

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[62] *AT&T-MediaOne Merger Order* ¶ 7; *see also id.* ¶¶ 154-69; *AT&T-TCI Merger Order* ¶¶ 145-48.

[63] Pub. L. No. 104-104, 110 Stat. 56 (1996).

[64] *See generally* Industry Analysis Division, Common Carrier Bureau, FCC, *Trends in Telephone Service*, Chapter 9 (Aug. 2001), *available at*: <http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/trend801.pdf> ("*Trends in Telephony*"); Industry Analysis Division, Common Carrier Bureau, FCC, *Local Telephone Competition* (May 2001), *available at*: <http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-state_Link/IAD/lcom0501.pdf>.

establishing "a pro-competitive, de-regulatory national policy framework" for the U.S. telecommunications industry.[65]

1. Creating A Stronger Telephony Competitor

The deployment of cable telephony in new markets continues to involve considerable business risks. Cable systems entering the telephony business must underwrite large, upfront investments in new plant and develop and implement order processing, customer care, and other complex support systems, so as to overcome the substantial advantages of incumbent providers. As the FCC has often observed, an incumbent LEC's installed infrastructure allows it to serve customers at a lower incremental cost than a facilities-based entrant and to realize scale efficiencies provided by heavily concentrated customer bases.[66] The magnitude of the risks facing new entrants is underscored by the numerous telecommunications companies that have filed for bankruptcy in recent years.[67]

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[65] S. Conf. Rep. No. 104-23, 104th Cong., 2d Sess. 1 (1996); *see also UNE Remand Order* ¶¶ 103-104. The Commission has repeatedly recognized the enormous consumer benefits that will flow from cable-delivered residential local telephone service. *See Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 16 FCC Rcd 15435, ¶ 4 (2001); *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 15 FCC Rcd 3696, ¶ 27 (1999); *Promotion of Competitive Networks in Local Telecommunications Markets*, 14 FCC Rcd 12673, ¶¶ 4-7, 20 (1999); *2001 Video Competition Report* ¶¶ 50-54.

[66] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 15499, ¶¶ 10-11 (1996) (subsequent history omitted); *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, CC Docket No. 01-337, Notice of Proposed Rulemaking ¶ 29 (rel. Dec. 20, 2001) (FCC 01-360).

[67] These companies include ICG, NorthPoint, Rhythms NetConnections, Covad, Teligent, Winstar, PSINet, Convergent, Metricom, and Global Crossing.